

Environmental Protection Agency

§ 60.539b

(5) All written statements, charts, tabulations, and similar data offered in evidence at the hearings shall, upon a showing satisfactory to the Presiding Officer of their authenticity, relevancy, and materiality, be received in evidence and shall constitute a part of the record.

(h)(1) The Presiding Officer shall make an initial decision which shall include written findings and conclusions and the reasons or basis therefor on all the material issues of fact, law, or discretion presented on the record. The findings, conclusions, and written decision shall be provided to the parties and made a part of the record. The initial decision shall become the decision of the Environmental Appeals Board without further proceedings unless there is an appeal to the Environmental Appeals Board or motion for review by the Environmental Appeals Board. Except as provided in paragraph (h)(3) of this section, any such appeal shall be taken within 20 days of the date the initial decision was filed.

(2) The Administrator delegates authority to the Environmental Appeals Board to issue final decisions in appeals filed under this section. An appeal directed to the Administrator, rather than to the Environmental Appeals Board, will not be considered. This delegation of authority to the Environmental Appeals Board does not preclude the Environmental Appeals Board from referring an appeal or a motion filed under this part to the Administrator for decision when the Environmental Appeals Board, in its discretion, deems it appropriate to do so. When an appeal or motion is referred to the Administrator, all parties shall be so notified and the rules in this section referring to the Environmental Appeals Board shall be interpreted as referring to the Administrator. On appeal from or review of the initial decision, the Environmental Appeals Board shall have all the powers that it would have in making the initial decision including the discretion to require or allow briefs, oral argument, the taking of additional evidence or the remanding to the Presiding Officer for additional proceedings. The decision by the Environmental Appeals Board shall include written findings and conclusions

and the reasons or basis therefor on all the material issues of fact, law, or discretion presented on the appeal or considered in the review.

(3) In any hearing requested under paragraph (a)(2) of this section the Presiding Officer shall render his initial decision within 60 days of that request. Any appeal to the Environmental Appeals Board shall be taken within 10 days of the initial decision, and the Environmental Appeals Board shall render its decision in the appeal within 30 days of the filing of the appeal.

[53 FR 5873, Feb. 26, 1988, as amended at 57 FR 5328, Feb. 13, 1992]

§ 60.539a Delegation of authority.

(a) In delegating implementation and enforcement authority to a State under section 111(c) of the Act, the authorities contained in paragraph (b) of this section shall be retained by the Administrator and not transferred to a State.

(b) Authorities that shall not be delegated to states:

- (1) [Reserved]
- (2) Section 60.531, Definitions,
- (3) Section 60.533, Compliance and certification,
- (4) Section 60.534, Test methods and procedures,
- (5) Section 60.535, Laboratory accreditation,
- (6) Section 60.536(i)(2), determination of emission rates for purposes of labeling wood heaters certified under § 60.530(c),
- (7) Section 60.537, Reporting and recordkeeping,
- (8) Section 60.538(e), revocation of certification, and
- (9) Section 60.539, Hearings and appeals procedures.

[53 FR 5873, Feb. 26, 1988, as amended at 60 FR 33925, June 29, 1995]

§ 60.539b General provisions exclusions.

The following provisions of subpart A of part 60 do not apply to this subpart:

- (a) Section 60.7,
- (b) Section 60.8(a), (c), (d), (e), and (f), and
- (c) Section 60.15(d).